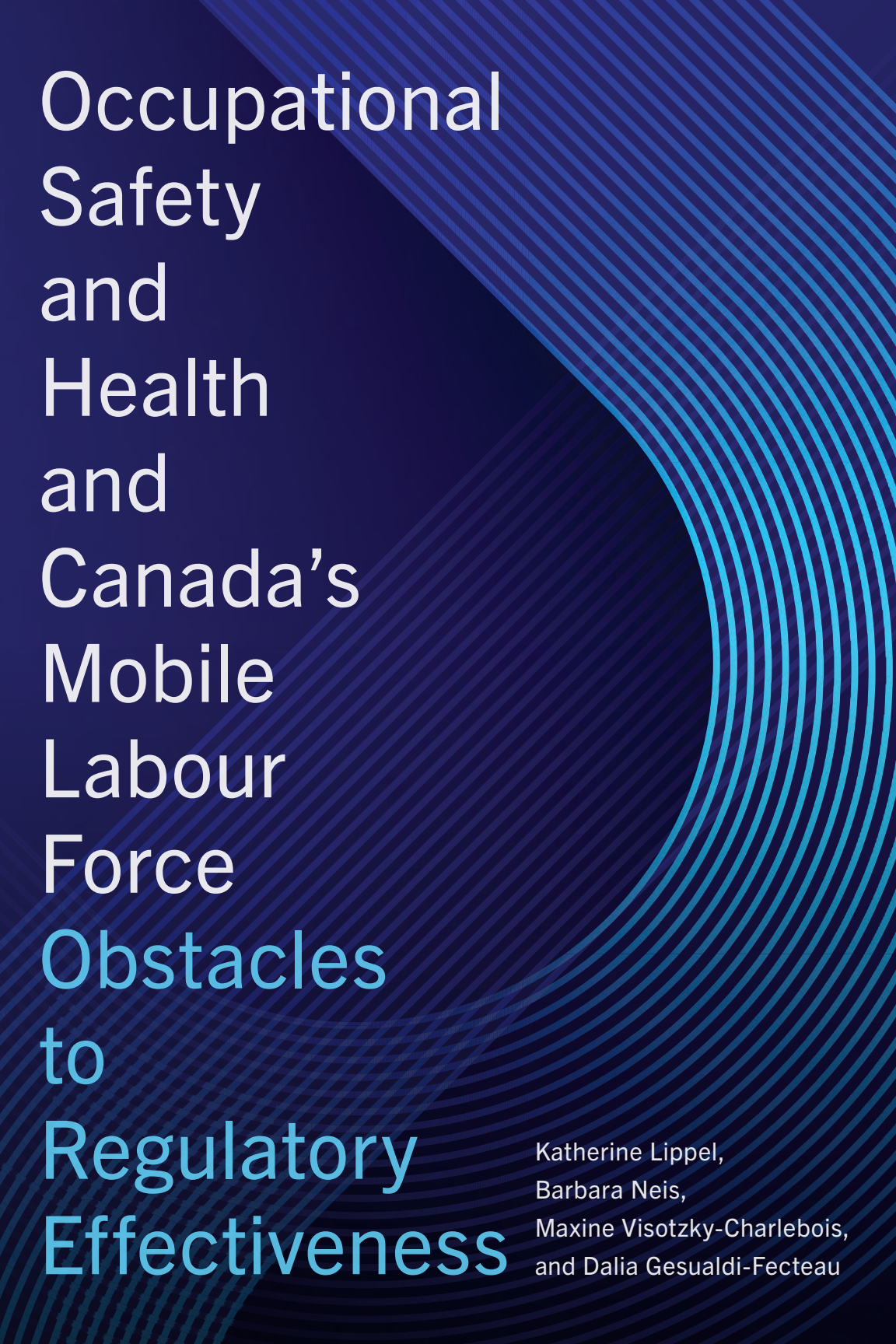




Occupational Safety and Health and Canada's Mobile Labour Force Obstacles to Regulatory Effectiveness

Katherine Lippel,
Barbara Neis,
Maxine Visotzky-Charlebois,
and Dalia Gesualdi-Fecteau

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Preface

As the principal author of this volume, the late Katherine Lippel, Distinguished Chair in Occupational Health and Safety Law at the University of Ottawa, conceived and began this project as part of her substantial contributions to the On the Move Partnership. On the Move was a groundbreaking Canadian interdisciplinary research program directed by coauthor Barbara Neis that explored the impact of employment-related geographic mobility on workers, families, employers, and communities across Canada.

Katherine's role in On the Move was central. As the lead of the policy component, she showed how regulatory frameworks interact with the complex realities of mobile workers' lives, including how their mobility intersects with occupational safety and health, workers' compensation, employment standards, and other policies to create regulatory gaps that can put their health and welfare at risk. These workers and the mobility-related hazards they experience are often made invisible by the frameworks and institutions meant to protect them.

Throughout her involvement with On the Move, Katherine oversaw and conducted empirical research and legal analysis to provide a comprehensive, justice-oriented examination of the protections—or lack thereof—afforded to mobile workers within Canada's regulatory landscape. Her research and that of her team members showed the important challenges faced by mobile workers and the structural barriers to justice they often encounter.

Tragically, Katherine passed away in 2021 before she and Barbara could complete the manuscript. In the wake of her loss, Dalia Gesualdi-Pecteau and Maxine Visotzky-Charlebois, legal scholars and former

students of Katherine's, worked with Barbara to pursue her intent and bring this important work to publication. Drawing on Katherine's extensive research, notes, drafts, and prior writings, they have sought to remain faithful to her voice and vision while broadening the focus and updating the legal analysis and literature on which it draws.

The coauthors hope that readers—whether scholars, students, practitioners, or policymakers—will find here a book that has retained the depth of Katherine Lippel's scholarship. May the book contribute to sustaining the insightful conversations she brought to the On the Move Partnership and to all the other conversations and research collaborations she supported and led in Canada and globally. May it also provoke new questions and continue to guide, inspire, and empower generations to come.

Acknowledgements

The On the Move Partnership was supported by the Social Sciences and Humanities Research Council through its Partnership Grants funding opportunity (Application ID 895-2011-1019), InnovateNL, the Canada Foundation for Innovation, and numerous community partners. This book was also partially supported by the Policy and Practice in Return-to-Work After a Work Injury: Challenging Circumstances and Innovative Solutions research partnership funded by the Social Sciences and Humanities Research Council of Canada (895-2018-4009), the Canadian Institutes of Health Research (159064), the University of Ottawa's Office of the Vice-President, Research and Innovation, and multiple universities and partners.

This book and the core research on which it draws would not have been possible without the insight, guidance, and careful engagement of Katherine Lippel in her roles as the policy component lead of the On the Move Partnership for almost ten years and as lead researcher and author of the original partial manuscript that the coauthors have developed since her death. There was no more accomplished and knowledgeable Canadian sociolegal researcher in the areas of occupational safety and health and workers' compensation in Canada at the time of her passing. As coauthors, we have done our best to remain true to her high standards, methodological rigour, and deep sociolegal insights. We can only hope she would approve of the final product.

On the Move coinvestigator David Walters worked with Katherine on conceptualizing the relationship between employment-related geographical mobility and occupational safety and health and its implications for policy effectiveness on some of the early research and coauthored at least

one publication. Many other On the Move researchers, graduate students, and postdoctoral fellows did focused work on occupational safety and health (OSH) policy and work-related mobility that resulted in publications we have cited in this book. We thank these researchers for their engagement with On the Move and relevant topics. Janet Oliver was the project manager for On the Move and, in that role, managed the finances and helped organize many of the key meetings and dialogues that helped On the Move achieve its goals and objectives. Lesley Butler provided tremendous editorial support in formatting and proofing the manuscript. Ellen MacEachen and Stéphanie Premji took over responsibility for Katherine's Policy and Practice in Return-to-Work After a Work Injury partnership grant after she passed and continue to lead that initiative. We thank them for providing some financial support from that partnership to help carry the manuscript over the finish line and for support for some of the research on return to work within the mobile labour force cited in this book. We also thank Monique Lefebvre, project manager for Policy and Practice in Return-to-Work After a Work Injury, for her dedication to this project. Fred Sweet provided gentle and engaged support in his role as friend and as the late Katherine Lippel's partner and manager of her estate. Connor Houlihan at Athabasca University Press demonstrated amazing patience while we found a way to turn a rough and incomplete draft report into a finished book. Geneviève Richard, Majda Lamkhioued, Guillaume Trifiro, Jérôme Bélanger, and Jean-Paul Dautel did some of the background legal research needed to update the policy and case law information from the original research. The two anonymous reviewers, along with Karyn Wisselink at AU Press and copyeditor Danny Constantino, provided extremely helpful comments and suggestions for improvements to the original submitted draft. Thanks to all.

Abbreviations

AWCBC	Association of Workers' Compensation Boards of Canada
BC	British Columbia
CEEDD	Canadian Employer-Employee Dynamics Database
CNESST	Commission des normes, de l'équité, de la santé et de la sécurité du travail
CSST	Commission de la santé et de la sécurité du travail
DIDO	drive-in/drive-out
ELD	electronic logging device
ERGM	employment-related geographical mobility
ESDC	Employment and Social Development Canada
FIFO	fly-in/fly-out
IAVGO	Industrial Accident Victims' Group of Ontario
IJA	Interjurisdictional Agreement on Workers' Compensation
IJE	interjurisdictional employment
ILO	International Labour Organization
IMP	International Mobility Program
IMW	international migrant worker
IRCC	Immigration, Refugees and Citizenship Canada
LMIA	Labour Market Impact Assessment
MWAC	Migrant Workers Alliance for Change
NL	Newfoundland and Labrador
OSH	occupational safety and health
OTM	On the Move Partnership
RTW	return-to-work
SAWP	Seasonal Agricultural Worker Program

TFW	temporary foreign worker
TFWP	Temporary Foreign Worker Program
TSB	Transportation Safety Board of Canada
WCB	workers' compensation board
WSIB	Workplace Safety and Insurance Board

Introduction

Journeys to work, while variable across space and time, are generally becoming more sustained and complex. Intra- and interurban, rural–urban and urban–rural commuting, and interprovincial travel for work are common (Haan, Walsh and Neis 2014). Other kinds of work-related geographical mobility are also widespread, including mobility *as* work, as in the transportation and some other sectors; mobility *within* work, as in multisite work situations in home care, construction, and cleaning; and international labour mobility into Canada and other countries. In this book, we use the concept of employment-related geographical mobility (ERGM) to capture these diverse patterns of mobility. As defined by Roseman, Barber, and Neis (2011, 121–56),

Employment-related geographical mobility ranges across a spectrum from relative immobility (work at home); through extended, daily travel to and from work and within jobs; to regular, more extended absences from home at regional, national, and international scales. This spectrum therefore considers not only transnational mobility to and as part of employment, but also similar movement (and lack thereof) between localities, regions, and

provinces and states, as well as across other subnational borders. We use the adjective “geographical” to distinguish this form of mobility from the alternative meaning of “mobility” in the social sciences, where it is associated with “upward” or “downward” social and economic movement along the kind of scales (such as class and education) that are used by some theorists.

The social, economic, and health implications of ERGM are complex and important. This book is about the effectiveness of Canada’s regulatory systems for the protection of the occupational safety and health (OSH),¹ including access to workers’ compensation, of Canada’s mobile labour force. Canada’s mobile labour force is defined here as those who engage in extended/complex work-related mobility consisting of daily mobility to and from work (more than two hours per day), extended rotational mobility within provinces and territories (intra-jurisdictional) and between provinces and territories (inter-jurisdictional), and international labour mobility, as with international migrant workers (IMWs) who travel to Canada and take up paid work on a temporary basis or until they acquire permanent residency status. Although they are not the primary focus of our discussion, we also consider workers for whom mobility *is* work, as with workers in the transportation sector, as well as those employed in multiple or transient work locations (on a daily/weekly/monthly basis), as with many home care, cleaning, construction, and temp agency work situations. We note that some workers are doubly mobile, as in the case of deadheading airline crews, some Great Lakes seafarers, fish harvesters, and others, such as gig workers in Toronto who take the GO train to work in the downtown and who thus potentially engage in extended mobility to work and mobility as work. Working while mobile, as with work while passengers on planes, trains, buses, and ferries, is touched on here but also not our main focus (see Hughes and Silver 2020).

In each of these situations of complex/extended ERGM, mobility is to varying degrees challenging; its accomplishment requires effort and is essential (in that access to paid work is necessary for most people and failure to get to work or home safely and on time can have major consequences for workers and their families). Complex/extended ERGM often requires the investment of significant temporal, financial, infrastructural,

and social-relational resources at home, on the road, and at work in order to achieve fragile synchronicities (Neis et al. 2018). And to varying degrees and in different ways, it can pose significant hazards to OSH and affect regulatory effectiveness. We define *effectiveness* as the extent to which the objective or purpose pursued by the regulatory framework is fulfilled. Fundamentally and notwithstanding jurisdictional specificities, OSH frameworks seek to protect workers against physical and psychosocial risks. Workers' compensation regimes seek to provide the necessary care to workers who have suffered an occupational injury, from compensating for wage loss to providing support for physical, social, and professional rehabilitation.

A central argument of the book is that (1) a significant segment of the Canadian labour force engages in these diverse types of extended/complex ERGM to, within, and as work and (2) that such mobility is an important but neglected and poorly understood determinant of their OSH, including access to compensation, due in part to mobility-related challenges to regulatory effectiveness.

Why do we need a book on OSH, regulatory effectiveness, and Canada's mobile labour force? Extended/complex ERGM is not new—some workers have engaged in diverse work-related mobilities since long before the start of the industrial era. In recent decades, however, the scale and dynamics of ERGM have changed because of the combined impacts of deregulation, globalization, urbanization, changes in transportation, the expansion of precarious employment, and the expansion of temporary labour migration relative to immigration. Furthermore, some research has shown that many of the changes that are contributing to increased ERGM are also negatively affecting worker safety and health, including through eroding regulatory effectiveness. Examples of the latter include discussions of the “fissured” workplaces associated with extensive subcontracting (Weil 2014) and research on the blurring of employer responsibility for OSH associated with third-party temp agency work contracts (Lippel et al. 2011). Precarious employment has been shown to contribute to higher injury risk through its negative impact on workers' capacity to exercise their rights—including their rights to know about hazards, to participate in health and safety monitoring and prevention, and to refuse dangerous work (Quinlan, Mayhew, and Bohle 2001). It is also

associated more broadly with heightened pressure, disorganization, and risk of regulatory failure (Underhill and Quinlan 2011). Analyses of the global expansion of international migrant work have explored the layers of vulnerability and documented safety and health hazards and regulatory issues contributing to high injury rates and other OSH challenges among these workers (Sargeant and Tucker 2009). A core question here is how and to what extent threats to OSH are linked to work-related mobility.

While important, existing research on the changing world of work and its consequences for OSH has been largely disconnected from the growing body of mobility studies. Mobility studies researchers have demonstrated the pervasiveness of mobility, its complex dynamics, and ways it intersects with family and working lives but have, until recently, paid relatively little attention to work-related mobility and to OSH (see Roseman, Barber, and Neis 2015; Cresswell, Dorow, and Roseman 2016; Dorow, Roseman, and Cresswell 2017). Furthermore, where they exist, studies on mobile workers and OSH have generally focused on a particular type of ERGM (extended daily commuting, fly-in/fly-out [FIFO] work, international agricultural workers). This literature has also tended to focus on particular issues or concerns, such as vulnerability to exploitation among IMWs and to repatriation for injured IMWs; FIFO impacts on work-family conflict; heightened health and safety risks associated with work as mobility, including in trucking, seafaring, and fishing; or the relationship between work scheduling and commute accidents in urban areas.

This book is part of a larger effort to integrate the safety and health literatures on the changing world of work with insights from mobility research to help address this knowledge gap. The book draws on theoretical and research insights from a major, multidisciplinary program of research on ERGM in the Canadian context called the On the Move Partnership (OTM; On the Move Partnership, n.d.). OTM was a ten-year program of research that supported policy, field, and statistical research on diverse forms of extended/complex ERGM across multiple sectors in seven Canadian provinces and in urban and rural contexts between 2012 and 2022. When OTM was originally conceived, researchers, community leaders, and policymakers had limited knowledge of the distribution, scale, and rhythms of diverse types of extended/complex mobility, their relevance

for regulatory effectiveness, and the associated impacts on workers, families, and communities. Within Canada, there was awareness of surging temporary international and internal labour mobility, but little was known about related labour markets and ERGM influences on households and communities, including in labour-exporting regions. In labour-importing regions, such as the Alberta oil sands, community leaders argued that census-based government funding allocations did not compensate for costs of servicing large “shadow” (mostly undocumented) populations of migrant workers in communities and local work camps. Industry organizations in growing sectors associated with hypermobility (construction and transportation) wanted to know more about the relationship between ERGM and the recruitment and retention of workers (male and female) and about the health and safety implications of, for example, extended rotations for FIFO and drive-in/drive-out (DIDO) workers. Although average daily commute times were increasing in urban areas in Canada, data assumed commutes were to fixed places of work, neglecting the expansion of precarious employment and associated employment in transient (temp agency) and sometimes multiple workplaces (as with home care and cleaning work). Human resources scholarship and policies on work-family conflict largely ignored ways extended/complex ERGM could accentuate work disruptions in family lives and ways conflicts between family, mobility, and work demands might affect OSH (Hughes and Silver 2020). OTM, with its multidisciplinary, multisector spectrum approach to ERGM, sought to address these knowledge gaps, identify related gaps in policy and practice, and explore ways to address them.

The book updates and further develops work done by the late Katherine Lippel, lead author of the book, as part of OTM and other major programs of research, including Lippel’s Policy and Practice and Return-to-Work After a Work Injury partnership at the University of Ottawa. It builds on and updates findings presented in a special issue of *New Solutions* co-edited by authors Lippel and Neis (2019). That special issue introduces the broader concept of the mobile labour force and explores key challenges for effective implementation of protections in Canada (regulatory effectiveness) related to the application of health and safety legislation, workers’ compensation provisions, and employment standards across diverse groups and ERGM situations.

As with OTM, this book focuses primarily on the situation in Canada. Canada's geography as a large country, based historically on settler colonialism and extensive reliance on resource extraction, with widely dispersed small settlements and a few large cities and with a growing reliance on temporary international labour migrants, is associated with a broad spectrum of ERGM, including short- and long-distance mobility within and into Canada. As explored by OTM researchers, we argue a key reason for the relative invisibility of mobility as an occupational health determinant can be found in the legacy within Canada (and many countries) of OSH regulations based on assumptions tied to standard employment relationships that, as is now well known, only ever fit well with a segment of the Canadian labour force and whose dominance has eroded significantly in recent years. Standard employment relationships are normally defined as employment relationships in which an employee, bound to a single employer, provides services on a full-time basis and for an indefinite period of time in a single physical location (Vosko 2006). ERGM challenges effective implementation of OSH regulatory frameworks in part because it blurs the very meaning of what work is. Linked to this is the distinction between work time and travel time that permeates Canada's OSH, compensation, and employment standards regulatory frameworks (Gesualdi-Fecteau, Nakache, and Matte Guilmain 2019), which are based on the assumptions that where workers live and their commute to work are the product of individual choice and thus responsibility, whereas their experiences at work are mediated by employer dominance to varying degrees. As such, it is assumed that only the latter should be subject to employment-related regulation, while the former should be regulated through other means such as transportation safety, private insurance, and law enforcement rather than employers, inspectors, and OSH bodies.

During our OTM research, we realized early on that the fact that in Canada, OSH and workers' compensation are largely provincial responsibilities with some limited federal jurisdiction had implications for regulatory effectiveness, particularly among interjurisdictionally mobile workers. Similarly, IMWs are entering Canada for work, largely based on rules associated with diverse federal immigration programs, while OSH is largely a provincial responsibility. For this reason and others, the effective

protection of the OSH of these workers is particularly challenging and thus a focus of parts of our discussion, particularly in chapter 5.

Within Canada, rather than examining law and policy in all Canadian jurisdictions, we will focus on the strengths and weaknesses of OSH and workers' compensation legislation primarily in four Canadian jurisdictions—Alberta, Newfoundland and Labrador, Ontario, and Québec—as applied to the mobile workforce. We include some discussion of potential challenges to workers engaged in ERGM who contract occupational illnesses in the wake of work-related exposures and illustrate that with a focused discussion of the COVID-19 pandemic and the mobile labour force in chapter 6.

As we shall see from the analysis that follows, mobility in many cases, although in some ways not for international labour migrants, contributes to the invisibility of workers engaged in ERGM, and from an employer perspective, increased invisibility may perhaps suggest a reduction in accountability. Certainly, we have seen that ERGM work arrangements, as with many categories of precarious employment, transfer to the workers a variety of risks historically borne by employers (Lippel, Johnstone, and Baril-Gingras 2017).

The book is laid out in the following way. Chapter 1 opens with a statistical portrait of Canada's mobile labour force. That profile updates a 2016 version contained in the introduction to the *New Solutions* special issue, where Neis and Lippel (2019) conclude the mobile labour force comprised 16 percent of the overall labour force at the time. We update that profile in chapter 1. Discussion of the statistical profile signals both the size and complexity of Canada's mobile labour force and the very real challenges created by existing statistical sources for capturing and monitoring extended/complex ERGM in Canada. Section 2 of chapter 1 synthesizes findings from disparate bodies of OSH-relevant research on the hazards and injury risks associated with diverse types of mobility, concluding that work-related mobility in its different forms is an important determinant of OSH that deserves more attention. The chapter concludes by introducing the conceptual framework that informs our larger analysis. The framework outlines multiple determinants of regulatory effectiveness related to OSH and workers' compensation for the mobile labour force. These determinants include the relative (in)visibility to regulators and others of certain

About the Authors

The late **Katherine Lippel**, LLL, LLM, FRSC, was a full professor of law at the Faculty of Law and Distinguished Research Chair in Occupational Health and Safety Law at the University of Ottawa. Her research focused on legal issues relating to occupational health and safety, workers' compensation, and return to work after work injury and included, in particular, an interest in health effects of compensation systems, regulatory challenges related to precarious employment and globalization, and health and safety issues related to gender. She was the project director for Policy and Practice in Return-to-Work After a Work Injury, a Social Sciences and Humanities Research Council (SSHRC) / Conseil de recherches en sciences humaines (CRSH)-funded partnership at the University of Ottawa and coinvestigator and lead for the policy component of the SSHRC-funded On the Move Partnership prior to her untimely passing in 2021. These research programs funded this book, which could not have been written without the resulting research. The book also draws on the insights Katherine gained from decades of dedicated engagement in not only documenting but also reducing threats to the occupational health of workers in Canada and globally and improving their access to compensation.

Barbara Neis, PhD, FRSC, CM, is professor emerita and John Lewis Paton Distinguished Professor in the Department of Sociology at Memorial University. Between 2012 and 2023, Professor Neis was the project director for the On the Move Partnership, a multimillion-dollar pan-Canadian

program of research funded by the Social Sciences and Humanities Research Council with contributions from multiple universities and community partners. On the Move researchers and their partners explored the dynamics of extended/complex employment-related geographical mobility, including how diverse kinds of mobility might influence workplace and family dynamics and their impact on occupational health. Work done by On the Move researchers inspired and deeply informs this book.

Maxine Visotzky-Charlebois is a lawyer and professor of labour law at the Université du Québec à Montréal. Her doctoral research focuses on the role of trade unions in the implementation of Québec's occupational health and safety framework. She is a recipient of the Vanier Canada Graduate Scholarship. Maxine Visotzky-Charlebois is also a member of the Inter-university Research Centre on Globalization and Work (CRIMT) and has collaborated on the Policy and Practice in Return-to-Work After Work Injury partnership project led by the late Professor Katherine Lippel. Her research interests centre on the effectiveness of labour legislation and issues related to access to justice.

Dalia Gesualdi-Fecteau is a full professor at the School of Industrial Relations at the Université de Montréal (Canada) and director of the Inter-university Research Centre on Globalization and Work (CRIMT). Her research documents the extent to which labour law succeeds in redressing inequalities. Dalia Gesualdi-Fecteau was part of the On the Move Partnership as a coinvestigator. She has served on the Expert Panel on Modern Federal Labour Standards (2019) and the Expert Panel on Sexual Harassment and Sexual Assault in the Workplace (2023). She has conducted extensive fieldwork, and most of her research is carried out in conjunction with world-of-work actors.